

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

UNITED STATES OF AMERICA,

Criminal No. 06-254(2) JNE/AJB

Plaintiff,

v.

REPORT AND RECOMMENDATION

DEMICIO RUIZ LEAL,

Defendant.

Jeffrey S. Paulson, Esq., Assistant United States Attorney, for the plaintiff, United States of America;

Patrick Ellis, Esq., and Kevin M. O'Brien, Esq., for defendant Demicio Ruiz Leal.

This action came on for hearing before the Court, Magistrate Judge Arthur J. Boylan, on September 8, 2006, at the U.S. Courthouse, 300 South Fourth St., Minneapolis, MN 55415. The Court issued an Order on Motions dated September 11, 2006, reserving defendant Demicio Ruiz Leal's Motion for Suppression of Evidence from Search and Seizure [Docket No. 27] for submission to the district court on report and recommendation.

Based upon the file and documents contained therein, along with an exhibit received at hearing, the Magistrate Judge makes the following:

Findings

On July 10, 2006, Hennepin County District Court Judge Patricia L. Belois issued a warrant to search a particularly described apartment address in Crystal, Minnesota, including any assigned storage units and the persons of two named individuals. (Hearing Exh. No. 1). The search

warrant identified the objects of the warrant as controlled substances, including methamphetamine; specified drug packaging, distribution, and consumption equipment and supplies; documents, safe deposit box keys, and financial records showing drug sales and possession activities and possession or control of search locations; guns or other weapons; money and valuables; and communications devices. The warrant was issued on the basis of probable cause contained in the Affidavit of Minnesota BCA Special Agent Douglas Henning, including confidential informant and surveillance information, and evidence obtained as a result of controlled drug buys. The search warrant further authorized unannounced entry based upon an assertion contained in the supporting affidavit that one of the individual search subjects had been heard talking about guns.

Based upon the foregoing Findings, the Magistrate Judge makes the following:

Conclusions

Evidence seized pursuant to a warrant to search a particularly described apartment address in Crystal, Minnesota, including any assigned storage units and the persons of two named individuals (Hearing Exh. No. 1), was not unlawfully obtained in violation of the constitutional rights of defendant Demicio Ruiz Leal. The residence search warrant was issued on July 10, 2006, and was based upon sufficient probable cause as stated in the Affidavit of Minnesota BCA Special Agent Douglas Henning and as determined by Hennepin County District Court Judge Patricia L. Belois. The warrant properly and sufficiently identified the locations of the search and the items to be seized. The search warrant in this matter was lawfully issued and there is no requirement for suppression of evidence seized pursuant to the warrant. With respect to a challenge to the warrant based upon lack of probable cause to justify authorization for unannounced entry, the court finds no evidence to support a

determination that the entry in this instance was unannounced¹ and the issue is therefore moot.

Based upon the foregoing Findings and Conclusions, the Magistrate Judge makes the following:

RECOMMENDATION

The Court **hereby recommends** that defendant Demicio Ruiz Leal's Motion for Suppression of Evidence from Search and Seizure be **denied** [Docket No. 27].

Dated: September 12, 2006

s/ Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before September 27, 2006.

Unless the parties stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and file a complete transcript of the hearing within ten days of receipt of the Report.

¹ The attorney for the United States advised the court and counsel at hearing that entry pursuant to the search warrant was made through an already open door and the intent to enter the apartment was announced. There was no testimony presented on this issue.

